

and operation of a project with continued low income affordability restrictions, except as provided in this section.

[57 FR 12041, Apr. 8, 1992, as amended at 58 FR 37816, July 13, 1993]

**§ 248.177 Delegated responsibility to State agencies.**

(a) *In general.* The Commissioner shall delegate some or all responsibility for implementing subpart B of this part to a State housing agency if such agency submits a preservation plan acceptable to the Commissioner.

(b) *Approval.* State preservation plans shall be submitted in such a form and in accordance with such procedures as the Commissioner shall establish. The Commissioner may approve plans that contain:

(1) An inventory of low income housing located within the State that is or will be eligible low income housing under subpart B of this part within five years;

(2) A description of the agency's experience in the area of multifamily financing and restructuring;

(3) A description of the administrative resources that the agency will commit to the processing of plans of action in accordance with subpart B of this part;

(4) A description of the administrative resources that the agency will commit to the monitoring of approved plans of action in accordance with subpart B of this part;

(5) An independent analysis of the performance of the multifamily housing inventory financed or otherwise monitored by the agency;

(6) A certification by the public official responsible for submitting the consolidated plan under 24 CFR part 91 that the proposed activities are consistent with the approved consolidated plan of the State within which the eligible low income housing is located; and

(7) Such other certifications or information that the Commissioner determines to be necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of subpart B of this part.

(c) *Implementation agreements.* The Commissioner may enter into any agreements necessary to implement an approved State preservation plan, which may include incentives that are authorized under other provisions of subpart B of this part.

(d) *Fees.* Any State agency with responsibility so delegated under subpart B of this part may not charge any owner of eligible low income housing any fee for accepting notices of intent, processing plans of action or any other process pursuant to approval of a plan of action under subpart B of this part. This prohibition shall not preclude:

(1) An owner paying for its appraisal or share of a joint appraisal under the provisions of § 248.111; or

(2) A State agency from collecting fees normally associated with providing and processing financing insured under part 241 of this chapter.

[57 FR 12041, Apr. 8, 1994, as amended at 60 FR 16379, Mar. 30, 1995]

**§ 248.179 Consultation with other interested parties.**

The Commissioner shall confer with any appropriate State or local government agency to confirm any State or local assistance that is available to achieve the purposes of subpart B of this part and shall give consideration to the views of any such agency when making determinations under subpart B of this part. The Commissioner shall also confer with appropriate interested parties that the Commissioner believes could assist in the development of a plan of action that best achieves the purposes of subpart B of this part.

**§ 248.181 Notice to tenants.**

Except as provided in §§ 248.105 and 248.133, with respect to the first and second notices of intent, with regard to all provisions of subpart B of this part which mandate that information or material be given to the tenants, by the Commissioner, the owner, or a qualified purchaser, or other party, this requirement shall be satisfied where the notifying entity:

(a) Posts a copy of the information or material in readily accessible locations within each affected building, or posts notices in each location describing the information or material and specifying

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a location, as convenient to the tenants as is reasonably practical, where a copy may be examined and copied during reasonable hours; and

(b) Supplies a copy of the information or material to a tenant representative, if any.

### § 248.183 Preemption of State and local laws.

(a) *In general.* No State or political subdivision of a State may establish, continue in effect, or enforce any law or regulation that:

(1) Restricts or inhibits the prepayment of any mortgage described in § 248.101 or the voluntary termination of any insurance contract pursuant to § 207.253 of this chapter on eligible low income housing projects;

(2) Restricts or inhibits an owner of such projects from receiving the authorized annual return provided under § 248.121;

(3) Is inconsistent with any provision of subpart B of this part, including any law, regulation, or other restriction that limits or impairs the ability of any owner of eligible low income housing to receive incentives authorized under subpart B of this part, including authorization to increase rental rates, transfer the project, obtain secondary financing, or use the proceeds of any such incentives; or

(4) In its applicability to low income housing is limited only to eligible low income housing for which the owner has prepaid the mortgage or terminated the insurance contract.

(b) *Effect.* Any law, regulation or restriction described in paragraph (a) of this section shall be ineffective and any eligible low income housing exempt from the law, regulation, or restriction, only to the extent that it violates the provisions of this section.

(c) *Laws of general applicability: contractual restrictions.* This section shall not prevent the establishment, continuing in effect, or enforcement of any law or regulation of any State or political subdivision of a State not inconsistent with the provision of this subpart, such as any law or regulation relating to building standards, zoning limitations, health, safety, or habitability standards for housing, rent control, or conversion of rental housing to

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condominium or cooperative ownership, to the extent such law or regulation is of general applicability to both projects receiving Federal assistance and nonassisted projects. This section shall not preempt, annul or alter any contractual restrictions or obligations existing before November 28, 1990 or voluntarily entered into by an owner of eligible low income housing on or after that date, and that limit or prevent that owner from prepaying the mortgage on the project or terminating the mortgage insurance contract.

[57 FR 12041, Apr. 8, 1992, as amended at 57 FR 57314, Dec. 3, 1992]

### Subpart C—Prepayment and Plans of Action Under the Emergency Low Income Preservation Act of 1987

SOURCE: 55 FR 38952, Sept. 21, 1990. Redesignated at 57 FR 12041, Apr. 8, 1992 unless otherwise noted.

#### § 248.201 Definitions.

The terms *Fair Market Rent (FMR)* and *Section 8* are defined in 24 CFR part 5.

*Adjusted Income.* Annual income, as specified in § 251.21 of this chapter, less allowances specified in the definition of *Adjusted Income* in § 215.1 of this chapter.

*Allowable Distributions.* The amount of cash or other assets that the owner may withdraw from the project under the terms of the regulatory agreement, applicable regulations, and administrative instructions, including the segregation of cash or assets for subsequent withdrawal, and excluding repayment of advances made for reasonable and necessary expenses incident to the operation and maintenance of the project.

*Capital Improvement Loan.* A direct loan originated by the Commissioner under part 219, subpart C of this chapter.

*Eligible Low Income Housing.* Any housing financed by a mortgage—

(a) That is—

(1) Insured or held by the Commissioner under section 221(d)(3) of the National Housing Act and assisted under part 886, subpart A of this title because